IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

WRIT PETITION NO.1105 OF 2000

Paramjeet Singh Bhogal (IAS-MH67)
s/o Late Shri Niranjan Singh Bhogal,
residing at Ground Floor, 1 Kedar,
Babubhai Chinai Marg,
Mumbai -400 020 .. **Petitioner**

Vs

1. Union of India,
through the Secretary, Ministry of
Personnel and Public Grievances and
Pensions, Department of Personnel and
Training, North Block,
New Delhi 110 001.

2. State of Maharashtra,
through the Chief Secretary,
General Administration Deptt,
Mantralaya, Mumbai 400 032.

3. Central Administrative Tribunal,
Mumbai Bench, 3rd floor, Gulestan Bldg,
Prescott Road, Fort, Mumbai 400 001. **Respondents**

Mr K. Shivaramkrishnan, for the petitioner.
Mr S.R.Nargolkar, Addl.Govt.Pleader, for the Respondent-State.

CORAM : V.G.PALSHIKAR & D.B.BHOSALE,JJ.
DATE : 12th September, 2005

ORAL JUDGMENT: (Per D.B.Bhosale, J.)

1. This writ petition under Article 226 of the Constitution of India challenges the judgment and order dated 8.12.1999 rendered by the Central Administrative Tribunal, Mumbai Bench, Mumbai dismissing the Original Application No.577/98 filed by the petitioner

challenging the order of compulsory retirement issued on 10.6.1998. The said action against the petitioner was taken under Rule 16(3) of the All India Services (Death-Cum-Retirmement Benefits) Rules, 1958 (for short, "the Rules") in public interest on his attaining 50 years of age.

2. The petitioner was an IAS officer of 1967 batch allotted to Maharashtra Cadre. He completed 30 years of service on 17.7.1997. He had not been given Selection Grade and Super Time Scale. He was awarded minor punishment in 1975-1976. A departmental enquiry was instituted against him in 1988 at the instance of his estranged wife which ended in exoneration of the petitioner. It appears that on several occasions between 1967-68 and 1994-95 adverse remarks were made in his confidential reports. In 1987-88, in response to his representation against the adverse remarks entered in that year, the adverse remarks were expunged. In 1995 the service record and other material of 13 officers including the petitioner was placed before the High Level Committee consisting of the Chief Secretary and the two Addl.Chief Secretaries. The said committee reviewed the cases of all 13 officers. Two officers, viz. the petitioner and one Mr.D.B.S.Sohal, were found to be unsuitable to continue in service and hence on the

recommendation of the committee the impugned order of compulsory retirement under rule 16(3) of the Rules was approved by the committee of the Cabinet. The order of compulsory retirement was served on the petitioner on 30.6.1998 and he was relieved of his post on that day. This order of compulsory retirement was the subject matter of the said original application.

3. We heard the learned counsel for the parties for quite some time, perused the impugned order and other material placed before us as also the judgments relied upon by the parties in support of their contentions. Mr Shivramkrishnan, learned counsel for the petitioner, challenged the impugned order on the following grounds. Firstly, Rule 16(3) is totally arbitrary and invalid since it does not qualify the minimum period of service and also violates the principles of natural justice. The said rule empowers the Central Government to compulsorily retire an officer in public interest who has completed 30 years of qualifying service or when he attains the age of 50 years. It was, therefore, submitted that the officer, who may not be having qualifying service of 30 years at the age of 50, cannot be retired compulsorily at the age of 50 years since it amounts to removal from service which cannot be done without having recourse to Article 311 (2) of the

Constitution of India. In short, the rule is invalid since it does not qualify for minimum period of service. In support of this contention, heavy reliance was placed on the judgment of the Apex Court in **Motiram Deka Vs. General Manager, N.E.Frontier Railway AIR 1964 SC 600**. Secondly, Mr Shivramkrishnan submitted that in any case uncommunicated adverse remarks cannot be taken into consideration while deciding whether an officer should be retired compulsorily in public interest. It is a clear case of violation of principles of natural justice and, therefore, the order is bad for noncompliance of the requirements of Article 311 (2) of the Constitution of India. The impugned action is also a colourable exercise to avoid departmental enquiry. Lastly, it was submitted that the immediate past record of the petitioner was not considered by the Review Committee which clearly shows that the petitioner had improved his performance, rendered meritorious and unblemished service during last few years and, therefore, the order of compulsory retirement is bad.

4. On the other hand, Mr Nargolkar, learned Addl.Govt Pleader for the respondent, contended that the object of rule 16(3) of the Rules is to weed out dead wood in order to maintain high standard of efficiency and initiative in the service. The review of service

record of an officer is taken at the time of completion of 50 years in order to find out whether he is suitable to be continued in service. The power of the Government to retire an officer after attaining 50 years of age or 30 years of service is an absolute power. The decision in so far as the petitioner is concerned was taken on the recommendation of the review committee, which considered the entire service record of the petitioner including his confidential reports. The record reveals that the conclusion arrived at by the review committee as also the Government that the petitioner had been clearly inefficient, indifferent and, therefore, was not fit to continue in service. The order of compulsory retirement cannot be termed as punishment and, therefore, Article 311(2) of the Constitution is not attracted. Rule 16 (3) cannot be held to be illegal in view of the settled position of law as reflected in a long series of the Judgments of the Apex Court. In so far as **Motiram Deka's case** relied upon by the petitioner is concerned, according to Mr Nargolkar, a clear answer to the same is the Judgment of the Apex Court in **T.G.Shivcharan Singh Vs. State of Mysore, AIR 1965 SC 280**. We were also taken through the record to show that even on merits there was sufficient material on record to justify the order of compulsory retirement passed under Rule 16 (3) of the Rules.

5. Before we consider the first submission of the learned counsel appearing for the petitioner that rule 16(1) is invalid, it would be necessary to notice few facts. The petitioner's case was considered by the review committee as a routine review along with all officers who had attained the age of 50 years as provided under the Rules. The service record and other material including the confidential reports of 13 officers was placed before the review committee consisting of the Chief Secretary and two Additional Chief Secretaries. When the record of all the officers was considered, on the first occasion they cleared the case of only 11 officers finding them suitable and fit to be continued in service after attaining the age of 50 years. As far as the petitioner and one D.B.S.Sohal are concerned, the committee felt that some more material should be produced and, therefore, adjourned the meeting with a direction to the office to prepare detailed briefs regarding these two officers. Then the committee met on 26.10.1995 and after considering the entire material that was placed before them and the law bearing on the point, decided that they are not fit to be continued in service and, therefore, recommended to retire them compulsorily in public interest. The report of the review committee was accepted by the State

Government and the proposal was then sent to the Central Government for further action. The case of the petitioner was, accordingly, placed before the Appointment Committee of the Cabinet consisting of the Prime Minister and the Home Minister. The said committee approved the proposed action and on that basis the impugned order of compulsory retirement under rule 16(3) came to be passed. Further, it may be noticed that the minimum age and the maximum age for recruitment for IAS cadre is 21 years and 28 years respectively. The petitioner had put in 27 years of service at the age of 50 years. He had admittedly put in 30 years of service on the date of the impugned order by which he was compulsorily retired and that he got the complete retirement benefits.

6. To appreciate the challenge to sub rule (3) of rule 16 of the said Rules, it would be relevant to notice the said rule which reads thus :

> "16(3). The Central Government may, in consultation with the State Government concerned and after giving a member of the Service at least three months' previous notice in writing, (or three months' pay and allowances in lieu of such notice) require that member to retire in public interest from service

> on the date of which such member completes thirty years of qualifying service or attains fifty years of age or on any date thereafter to be specified in the notice."

A plain reading of the rule would show that the following essential ingredients must be satisfied before an order compulsorily retiring a Government servant is passed. Firstly, the member of the service must have completed 30 years of qualifying service "or" the age of 50 years; secondly, the order must be passed in public interest, and thirdly, three months' previous notice in writing shall be given to the government servant concerned or three months pay and allowances in lieu of such notice before the order is passed. The Government has an absolute right to retire the government servant concerned because the word "require" as occurred in this rule clearly confers an unqualified right on the Central Government. In other words, the provision gives an absolute right to the government and not merely a discretion and, therefore, impliedly it excludes the rule of natural justice as held by the Apex Court in **Union of India Vs. M.E.Reddy and Anr (1980) 2 Supreme Court Cases 15**. It is not disputed in the present case that all the conditions mentioned

in rule referred to above have been complied with. The challenge to the rule is solely on the ground that at the age of 50 years it does not qualify for minimum period of service. In other words, that the Government is given discretion to retire a person at the age of 50 years without mentioning as to the minimum qualifying service and, therefore, it is arbitrary power and it amounts to removal of service without having recourse to Article 311(2) of the Constitution of India. Heavy reliance was placed on the judgment of the Apex Court in **Motiram Deka's case** (supra) in support of this contention. The relevant observations on which reliance was placed in paragraph 29 of the judgment read thus;-

> "But it is significant that the application of R.149(3) does not require, as normal rules of compulsory retirement do, that the power conferred by the said Rule can be exercised in respect of servants who have put in a prescribed minimum period of service. Therefore, the fact that some kind of proportionate pension is awardable to railway servants whose services are terminated under R.149(3) would not assimilate the cases dealt with under the said Rule to cases of compulsory retirement. As we will presently point out, cases of compulsory retirement which have been considered by this Court were all cases where the Rule as to compulsory retirement came into operation before the age of superannuation was reached and after a prescribed minimum period of service had been put in by the servant."

(emphasis supplied)

The Apex Court in **Motiram Deka's case** was considering the validity of Rules 148 and 149 of the Railway Establishment Code which empowers the railway administration to terminate the service of a railway employee. While considering this question, the four judges in the bench of seven judges of the Apex Court in paragraph 29 of the judgment made the aforesaid observations. It must be noticed that the majority opinion was delivered by His Lordship Mr Justice Gajendragadkar, as he then was. Within less than a year the Apex Court had an occasion to consider a direct question of compulsory retirement in **Shivcharan Singh's case** (supra). The Bench which was considering the said case, was presided over by His Lordship Mr Justice Gajendragadkar who had then become the Chief Justice of the Supreme Court. It is very pertinent to note that out of the four Judges who had given majority opinion in **Motiram Deka's case**, three of them including the speaking Judge were parties to **Shivcharan Singh's case**. In **Shivacharan Singh's case** also the observations quoted above in Motiram Deka's case were pressed into service when His Lordship Mr Justice Gajendragadkar, speaking for the Bench, in paragraphs 4 and 5 thereof, held thus:-

"(4) It would thus be clear that though the normal age of retirement under R.95 (a) is 55 years, under R.285 it is competent to the Government to retire compulsorily a government servant prematurely if it is thought that such premature retirement is necessary in the public interest. This power can, however, be exercised only in cases where the government servant has completed 25 years qualifying service or has attained 50 years of age. In other words, ordinary retirement by superannuation occurs after attaining 55 years or completing 30 years' service, while premature retirement can be forced on the government servant if he has either completed 25 years of service or has attained 50 years of age. In the case of premature compulsory retirement, the government servant is entitled to pension as indicated in note 1 to Rule 285.

(5) Mr Venkataranga Iyengar contends that this Rule is invalid, because it contravenes Art.14 as well as Art.16(1) of the Constitution. In our opinion, this contention can no longer be entertained; because it is concluded by a long series of decisions of this Court. Recently, a Special Bench of this Court had occasion to consider the validity of Rules 148 (3) and 149 (3) contained in the Indian Railway Establishment Code in Moti Ram Deka V General Manager, North East, Frontier Railway, Civil Appeals Nos 711 to 713 of 1962; 714 of 1962 and 887 to 889 of 1963 dated 5.12.1963 (AIR 1964 SC 600). In dealing with the problem raised in that case, this Court has made it perfectly clear that so far as the question of compulsory retirement is concerned, it must be taken to be concluded by several decisions of this Court. This Court then examined the relevant decisions on this point beginning with the case of Shyam lal V State of U.P. 1955-1 SCR 26; (AIR 1954 SC 369) and it has observed that the law

> in relation to the validity of the Rules permitting compulsory premature retirement of government servants must be held to be well-settled by those decisions and need not be reopened. The only exception the majority judgment made in that behalf was that it may be necessary to consider whether such a rule of compulsory retirement would be valid if having fixed a proper age of superannuation, it permits a permanent servant to be retired at a very early stage of his career. This consideration does not arise in the present case, because, as we have already seen, note 1 to R 285 requires that the government servant against whom an order of compulsory retirement is proposed to be passed must have completed either 25 years of active service or attained 50 years of age. We are, therefore, satisfied that the point which Mr Venkataranga Iyengar wants to raise before us in the present petition is clearly concluded by the decisions of this Court and cannot be allowed to be reopened."

It is pertinent to note that the Supreme Court in **Motiram Deka's** case itself has clarified in paragraph 51 that they were not called upon to consider whether a rule of compulsory retirement would be valid. It was further observed that they have referred to the decisions dealing with cases of compulsory retirement only for the purpose of ascertaining the fact of the obiter observations made in some of those decisions in relation to the question with which they were directly concerned.

7. In **Shivcharan Singh's case**, the virus of rule 285 of Mysore Civil Services Rules, 1958 was challenged which had empowered the government to retire an officer after he has completed 25 years of service or on attaining 50 years of age. While dealing with the said challenge, the observations quoted above were made by the Apex Court. It is clear from the observations made by the Apex Court in **Shivcharan Singh case** that the Apex Court had given seal of approval that the rule, which permits compulsory retirement when one had completed 25 years of service or 50 years of age is perfectly valid rule. In view of the judgment of the constitutional bench of the Supreme Court in **Shivcharan Singh's case**, the submission questioning the constitutional validity of rule 16 (3) falls to the ground. In yet another case, the Apex Court in **Takhetray Shivdattray Mankad Vs. State of Gujarat, AIR 1970 Supreme Court 143** while considering the similar rule in Saurashtra Covenanting State Services (Superannuation Age) Rules, 1955, in paragraph 6, held thus:

> "6. ... . In Gurdev Sing Sindhu V State of Punjab, 1964-7 SCR 587=(AIR 1964 SC 1585), it was pointed out that the only two exceptions to the protection afforded by Article 311(2) were,- (1) where a permanent public servant was asked to retire on the

> ground that he had reached the age of superannuation which was reasonably fixed (2) that he was compulsorily retired under the Rules which prescribed the normal age of superannuation and provided a reasonably long period of qualified service after which alone compulsory retirement could be valid. The basis on which this view has proceeded is that for efficient administration it is necessary that public servants should enjoy a sense of security of tenure and that the termination of service of a public servant under a rule which does not lay down a reasonably long period of qualified service is in substance removal under Article 311 (2). The principle is that the rule relating to compulsory retirement of a Government servant must not only contain the outside limit of superannuation but there must also be a provision for a reasonably long period of qualified service which must be indicated with sufficient clarity. To give an example, if 55 years have been specified as the age of superannuation and if it is sought to retire the servant even before that period it should be provided in the rule that he could be retired after he has attained the age of 50 years or he has put in service for a period of 25 years."
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> (emphasis supplied)

8. The Supreme Court in **M.E.Reddy's case** was considering the same rule which falls for our consideration in the instant writ petition. The observation made by the Apex court in paragraph 9 of the said judgment is a clear answer to the submission advanced by the learned counsel for the petitioner challenging the validity of Rule 16 (3). The relevant observations in paragraph 9 of the said

judgment read thus:

> "It is now well settled by a long catena of authorities of this Court that compulsory retirement after the employee has put in a sufficient number of years of service having qualified for full pension is neither a punishment nor a stigma so as to attract the provisions of Article 311 (2) of the Constitution. In fact, after an employee has served for 25 to 30 years and is retired on full pensionary benefits, it cannot be said that he suffers any real prejudice. The object of the rule is to weed out the dead wood in order to maintain a high standard of efficiency and initiative in the State Services. It is not necessary that a good officer may continue to be efficient for all times to come. It may be that there may be some officers who may possess a better initiative and higher standard of efficiency and if given chance the work of the government might show marked improvement. In such a case compulsory retirement of an officer who fulfils the conditions of Rule 16(3) is undoubtedly in public interest and is not passed by way of punishment."
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> (emphasis supplied)

It is now clear and settled by a long series of authorities of the Apex Court, in which similar rule has been considered, that rule 16(3) is valid and cannot be said to be arbitrary. What is necessary to be seen while applying rule 16(3) of the said Rules is whether the employee has put in a sufficient

number of years of service, at the age of 50, having qualified for full pension. If the employee is retired on full pensionary benefits, it cannot be said that he suffers any real prejudice. The basis on which this view has proceeded is that for efficient administration it is necessary that public servant should enjoy a sense of security of tenure. It is thus clear that, irrespective of normal age of retirement, under rule 16 (3) the government is competent to retire compulsorily a government servant prematurely if it is thought that such premature retirement is necessary in public interest. This power can be exercised in cases where the government servant after sufficient number of years of service is qualified for full pension at 50 years of age. In other words, the premature retirement can be forced on the government servant if he has either completed 30 years of service or has attained 50 years of age. Taking into consideration, minimum age and maximum age for recruitment for IAS cadre, which is 21 years and 28 years respectively, we have no hesitation in holding that prescribing 50 years of age for compulsory retirement for All India Service Officers is sufficiently long period. Moreover, an order of compulsory retirement implies no stigma nor any suggestion of misbehaviour. It cannot be said to be

removal from service nor punishment so as to attract the provisions of Article 311 (2) of the Constitution. In the instant case, the petitioner has completed sufficient number of years of service and has been retired on full pensionary benefits and has not suffered any real prejudice. In the result, the submission that rule 16(3) is arbitrary and invalid must be rejected.

9. The next submission advanced on behalf of the petitioner was in any case uncommunicated adverse remarks cannot be taken into consideration for forming an opinion as to whether an officer should be retired compulsorily in public interest. The question raised is no more res integra, and has been answered by the Apex Court in a long serious of judgments. One of such judgments, in our opinion, sufficient to answer the question raised by the petitioner would be **H.G.Venkatachaliah Setty Vs Union of India and Ors, 1998 SCC (L&S) 152**. The Apex Court in that case has reiterated the law laid down in **Baikuntha Nath Das and Anr Vs Chief District Medical Officer, Baripada and Anr, (1992) 2 Supreme Court Cases 299**, wherein it has been held that the order of compulsory retirement is not liable to be quashed by a Court merely on the showing that while passing it

uncommunicated adverse remarks were also taken into consideration and that circumstance, by itself, cannot be a basis for interference. It is thus clear that even uncommunicated adverse remarks can be looked into for forming an opinion to retire an officer compulsorily in public interest.

10. That takes us to consider the last submission of Mr Shivramakrishnan, learned counsel for the petitioner, that immediate past record of the petitioner was not considered by the review committee which clearly shows that the petitioner had improved his performance, rendered meritorious and unblemished service during last ten years and, therefore, the order of compulsory retirement is bad. At the outset, we must note that while dealing with the challenge to the order of compulsory retirement in the writ petition under Article 226 of the Constitution, we are not expected to examine the matter as an appellate court. This does not mean that judicial scrutiny is excluded altogether. If the order passed is found to be malafide or is based on no evidence or is arbitrary this Court can interfere with such order. Keeping this well settled position of law in view when we perused the impugned judgment we found that the Central Administrative

Tribunal has considered the entire material placed before it in a proper perspective to reach a conclusion that there was sufficient material on record to pass the impugned order under Rule 16 (3) of the Rules. However, to satisfy our conscious, we also examined the service record of the petitioner. We found that the review committee, after examining the entire service record of the petitioner including his confidential reports right from 1967-68 to 1994-95, recorded its findings. It would be advantageous to quote the report of the review committee in respect of the petitioner.

> 1. The Confidential record of Shri P.S.Bhogal reveals that he came to be assessed adversely in his confidential reports right from the earlier days in his career. Most of these adverse remarks in the confidential reports were communicated to him. A perusal of these remarks shows that by & large Shri Bhogal has been assessed as an easy-going officer who is casual and superficial in his work, one who does not apply himself to the task at hand, is irresponsible and immature. The confidential reports of Shri Bhogal have recurring references to his inefficiency, inability and his poor work from 1972-73 to 1994-95. Over half of this period Shri Bhogal has been assessed to be an officer of below average grade in his confidential assessment made by his superiors.
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> 2. Because of consistent adverse remarks in the confidential reports, Shri Bhogal could not qualify for

promotion to the Selection Grade and successive other higher grades whereas other officers of his batch in the cadre have already been promoted to the super-time scale of the I.A.S. and have reached a stage of consideration for the posts of Princ. Secretary to the State Government. Shri Bhogal was found to be unfit for the promotion to the Selection Grade by the Screening Committee in April 1983, January 1984, June 1984, September 1985, October 1985, May 1990 and July 1993. Because of this, Shri Bhogal continues in the senior time scale of the services. Shri Bhogal is unlikely to be promoted to the Selection Grade and other senior grades in future. Thus Shri Bhogal does not have any potential or positive contribution to public service by his mere continuation in service.

3. There were serious allegations of irregularities again at Shri Bhogal while he was working as Director World Bank Project, MHADA. These allegations are being enquired into separately. These allegations are serious, prima-facie establishing racklessness, arbitrariness in decision-making and actions outside his jurisdiction by Shri Bhogal. Similarly, some irregularities have also been noted in his handling of cases of non-agricultural permission while he was working as Additional Collector, Thane. This case is also being processed separately for fixing the responsibility.

4. Unfortunately, the conduct of Shri Bhogal in relation to his family members is quite controversial. A criminal case is lodged against him in the Court of Metropolitan Magistrate, New Delhi. This is still pending. The conduct of Shri Bhogal with respect to the proceedings of this case has been highly objectionable because of which he came to be issued non-bailable warrant of arrest and process under section 82 of the C.P.C.

5. The leave record of Shri Bhogal shows that during the last five years he has been on leave for a total of 660 days. This reveals his lack of interest in the work and absence of any efforts to show improvement in his work inspite of continuous adverse reports. As Shri Bhogal neither seems to have proper attitude towards work nor has any desire to show any improvement in the work, it is difficult not to conclude that Shri Bhogal's continuation in the service is not going to be in the larger interest of the State or the public good.

6. In the light of the above records, we have carefully considered Shri Bhogal's entire career in the service, his attitude towards work as well as his general reputation and conduct. His performance has been not only lack lustre, it has been full of inefficiency, indifference and per -functoriness. He has not shown any interest or desire to improve. We find him to be a case of constant deterioration from the point of performance in work, his conduct and reputation. His strainged family life, lack of interest in work and lack of desire to improve, convince us that he is not capable of meeting the required standards of performance and public behaviour, expected from an officer of his seniority in the service.

. After evaluating the different facts of Shri Bhogal's personality and his career so far, we conclude that the best interest of public service would be served by not continuing Shri Bhogal any longer in service beyond the age of 50 years. Therefore, we conclude that Shri Bhogal should not be continued in service beyond the age of 50 years in public interest. While arriving at this conclusion we have taken into consideration various principles enunciated by Courts in decided cases on compulsory retirement of officer from

> Government service and objectives of Rule 16(3)."

In our opinion, every observation made in the report is well founded. It may be noticed that the petitioner has not challenged the action on the ground of malafide. Nor did the counsel appearing for the petitioner could point out that the order suffers from malafide due to any higher officer or Minister having any animosity or hostility against him. The only submission advanced on his behalf was that immediate past record of the petitioner was not considered which, according to the petitioner, clearly shows that his performance was good and unblemish. It was also contended that one departmental enquiry was conducted against the petitioner and it ended in his exoneration. The record does not support this submission. In 1992-93 while rating him as "average" officer the following observations were made in his A.C.R. "(i) There were clashes between Shri Bhogal and VP. MHADA on the issue of sphare of work. (ii) Casual. Many times he would come late to meetings called by Secy.or VP.MHADA.(iii) Not much initiative seen.(iv) Relations with VP. MHADA deteriorated." The record further reveals that the enquiry was ordered against the petitioner in view of number of adverse remarks

in the A.C.Rs. The enquiry officer has noted that there are number of adverse remarks against the petitioner in different years and he has even extracted the relevant adverse remarks in his report. He has further observed that "it is rather disturbing that Shri Bhogal (the petitioner) should have earned such unfavourable remarks for several years when several reporting and reviewing authorities had occasions to see his work." The question was, whether on the basis of the adverse remarks any action could be taken against the officer and while dealing with this question the enquiry officer held that no action can be taken in an enquiry under Rule 8 of the All India Services (D&A) Rules, 1969. It is thus clear that it was not a case that the enquiry was closed or dropped on the ground that the petitioner rendered meritorious service or had a clean slate. As a matte of fact, the record reveals that there are number of adverse remarks against the petitioner but on that basis no penal action could be taken against him under rule 8. The petitioner, therefore, cannot take advantage of the said fact. It is now well settled that before passing an order under Rule 16 (3) it is not an entry here or an entry there which has to be taken into consideration by the government but the overall picture of the officer during the long years

of his service that he puts in has to be considered from the point of view of achieving higher standard of efficiency and dedication so as to be retained even after the officer has put in the requisite number of years of service. This is settled by the Apex Court in **M.E.Reddy's case**. The assessment made by the petitioner's superior officers from the very beginning of his service until the impugned order was passed, shows that at the best the petitioner was merely an average officer. Perusal of all the entries in his confidential reports right from 1967-68 till his service record was considered by the review committee, clearly shows that he was absolutely an average officer which was not expected of an IAS officer who is supposed to be a role model for his subordinates. A remark like average officer in the confidential report of an IAS officer is not a compliment. Keeping that in view and considering the entire record of the petitioner, we find absolutely no reason to interfere with the order passed by the Central Administrative Tribunal. The Tribunal has considered the entire material placed before it in proper perspective and has reached a conclusion which warrants no interference by this Court in its jurisdiction under Article 226 of the Constitution of India. The writ petition, therefore, fails and is

dismissed as such. Rule discharged.

(D.B.BHOSALE,J.) (V.G.PALSHIKAR,J.)

jb-wp1105-00

HIGH COURT
CIVILI APPELLATE SIDE

WRIT PETITION NO.1105 OF 2000

Date of Judgment:

September 12, 2005

For approval and signature

THE HON'BLE MR.JUSTICE V.G.PALSHIKAR.

THE HON'BLE MR.JUSTICE D.B.BHOSALE.

1. Whether Reporters of Local Papers may be allowed to see the judgment?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the Judgment?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any Order made thereunder?

5. Whether it is to be circulated to the Civil Judges?

6. Whether the case involves an important question of law and whether a copy of the judgment should be sent to Nagpur Aurangabad or Goa offices?